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Attorneys for Commenting Parties Manufactured Housing

Communities of Arizona and Michael A. Parham

## IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

Supreme Court No. R-17-0020

PETITION TO AMEND RULE  
13(b)(4) OF THE RULES OF  
PROCEDURE FOR EVICTION  
ACTIONS

SECOND ROUND COMMENTS  
ON PROPOSED RULE

Commenting Parties Manufactured Housing Communities of Arizona and Michael A. Parham file these Second Round Comments on the Petition to Amend Rule 13(b)(4) of the Rules of Procedure for Eviction Actions (the “Proposal”) filed by the Arizona Commission on Access to Justice (the “ACAJ”).

The ACAJ now proposes in its April 26, 2017 Supplement to revise Rule 13(b)(4) and the warning language to provide clarification and improve readability for self-represented litigants. It advises the modified rule will contain sections saying:

A. Both parties or their attorneys must personally appear before the court, **or**

**B. The attorney can assert to the court that the tenant was informed of the right to appear and declined. [...]**

E. The court determines that the parties understand the terms in the document **and defendant has signed** the warning language in (b).

1  
2 This change is acceptable to these parties provided the actual rule actually says  
3 that. But the version attached to the modified proposal does not accurately do so  
4 though it appears the ACAJ's intent is that it should. For example, the new ACAJ  
5 language requires the court to find that *all listed factors* have occurred prior to  
6 accepting the stipulation, but the enumerated factors are mutually exclusive and  
7 cannot occur together. Our proposed verbiage in the attached Appendices merely  
8 corrects the semantics to reflect that the court must find only one of the enumerated  
9 factors, before entering judgment. It is believed that this was the ACAJ's intent, and  
10 the language is merely being clarified to avoid confusion.

11 A second problem is the addition of the following language in the revised  
12 ACAJ proposal that creates a conflict under it:

13 D. ***The court determines that the parties understand the terms in***  
14 ***the document they signed*** and parties have initialed the warning  
15 language in (b).

16 Since both parties will not be there when a stipulation is accepted under the  
17 revised rule when one party elects not to personally appear this language will create  
18 confusion in the minds of judges. How are they to specifically make such a  
19 determination? The last paragraph of current RPEA 13(b)(4) reads in part as follows:

20 The amounts awarded in the judgment must be consistent with the  
21 amounts sought in the complaint, although the judgment may also  
22 include additional rent, late charges, fees and other amounts that have  
23 accrued since the filing of the complaint, if appropriate.

24 Courts must make this determination under the current rule and making it in  
25 each stipulation with the additional assertions of the plaintiff's attorney accomplishes  
26 this purpose without the additional language now proposed by the ACAJ. Anything in  
27 the stipulation out of line with what the Complaint seeks plus accruing sums thereafter  
28 would raise a red flag and trigger a rejection.

1  
2 These parties have revised the modified rule proposed by the ACAJ and it  
3 appears red lined on Appendix "A" hereto. A clean copy is Appendix "B" hereto.

4 **DATED:** May 31, 2017  
5

6 **WILLIAMS, ZINMAN & PARHAM P.C.**

7 Electronically Signed:

8 By: Melissa A. Parham

9 Michael A. Parham

10 Melissa A. Parham

11 7701 East Indian School Rd., Suite J

12 Scottsdale, AZ 85251

13 *Attorneys for Commenting Parties*

*Manufactured Housing Communities of Arizona and*

*Michael A. Parham*

14 A copy of these comments has been e-mailed  
15 this 31st day of May, 2017 to:

16 Hon. Lawrence Winthrop  
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APPENDIX "A" TO  
MHCA/PARHAM SECOND ROUND COMMENTS ON PROPOSED RULE  
Red Line Copy  
RULES OF PROCEDURE FOR EVICTION ACTIONS

**Rule 13. Entry of Judgment and Relief Granted**

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**b. Forms of Judgment.**

(4) Stipulated Judgments. The court may accept a stipulated judgment, ~~but only if~~ **when the court finds one of all the following:**

- A. Both parties or their attorneys personally appear before the court, ~~unless the court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; and~~
- B. The plaintiff's attorney asserts to the court that the defendant was informed of the right to appear and declined;
- C. The court determines that, ~~the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning:~~ because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; or
- D. An attorney for the defendant has signed the stipulation.

In addition, prior to accepting the stipulated judgment the court determines that the conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied, and that defendant has signed the warning language on the judgment form to which the defendant stipulated that reads as follows:

**~~Read carefully!~~ WARNING!**

**1. The plaintiff's representative is not a court employee.**

**2. By signing below, you are consenting to the terms of a judgment against you and the ~~landlord~~ plaintiff will now be able to evict you.**

3. You may ~~be evicted as a result of this judgment~~ have your wages garnished, and the judgment may appear on your credit report.

4. You may lose your right to subsidized housing, and

5. You may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent unless you get the agreement in writing or get a new written rental agreement with your landlord the plaintiff.

E. ~~The court determines that the parties understand the terms in the document they signed and parties have initialed the warning language in (b).~~

Yellow Highlights--ACAJ Changes to rule in original or revised proposal.

Red Language--Changes made in these comments.

**APPENDIX "B" TO  
MHCA/PARHAM SECOND ROUND COMMENTS ON PROPOSED RULE  
Clean Copy  
RULES OF PROCEDURE FOR EVICTION ACTIONS**

**Rule 13. Entry of Judgment and Relief Granted**

\*\*\*

**b. Forms of Judgment.**

(4) Stipulated Judgments. The court may accept a stipulated judgment, only when the court finds one of the following:

- A. Both parties or their attorneys personally appear before the court;
- B. The plaintiff's attorney asserts to the court that the defendant was informed of the right to appear and declined;
- C. The court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; or
- D. An attorney for the defendant has signed the stipulation.

In addition, prior to accepting the stipulated judgment the court determines that the conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied, and that defendant has signed the warning language on the judgment form to which the defendant stipulated that reads as follows:

**WARNING!**

- 1. The plaintiff's representative is not a court employee.**
- 2. By signing below, you are consenting to the terms of a judgment against you and the plaintiff will now be able to evict you.**
- 3. You may have your wages garnished and, the judgment may appear on your credit report.**
- 4. You may lose your right to subsidized housing, and**
- 5. You may NOT stay at the property, even if the amount of the judgment is paid in full, unless you get the agreement in writing or get a new written rental agreement with the plaintiff.**